

Senate Energy and Natural Resources Committee

Griffin Roberge 271-2878

HB 1766-FN, relative to remediating the Coakley Landfill in Greenland.

Hearing Date: April 3, 2018.

Time Opened: 9:36 a.m.

Time Closed: 11:46 a.m.

Members of the Committee Present: Senators Avard, Bradley, Innis, Fuller Clark and Feltes.

Members of the Committee Absent: None.

Bill Analysis: This bill requires the department of environmental services to order the parties responsible for dumping hazardous waste in the Coakley Landfill to undertake certain remedial actions.

Sponsors:

Rep. Messmer

Rep. Cushing

Rep. Bean

Rep. Edgar

Rep. T. Le

Rep. P. Gordon

Sen. Fuller Clark

Who supports the bill: Representative Suzanne Smith (Grafton - District 8), Paul Sanderson (Greenland), Representative James McConnell (Cheshire - District 12), Senator Martha Fuller Clark (District 21), Senator Dan Innis (District 24), Representative Dennis Malloy (Rockingham - District 23), Louise Spencer (Concord), Representative Robert Renny Cushing (Rockingham - District 21), Representative Mindi Messmer (Rockingham - District 24), Representative Timothy Horrigan (Strafford - District 6), Representative Susan Treleaven (Strafford - District 17), David Meuse (Portsmouth), Susan Covert (Contoocook), Tom Irwin (Conservation Law Foundation), Dabra Seiken (Portsmouth).

Who opposes the bill: Representative John O'Connor (Rockingham - District 6), Michael Wimsatt (DES), Mayor Jack Blalock (Portsmouth), Richard Head (Coakley Landfill Group), Michael Deyling (CES, Inc.).

Who is neutral on the bill: None.

Summary of testimony presented in support:

*Representative Mindi Messmer - provided written testimony
Rockingham - District 24*

- HB 1766-FN addresses the Coakley Landfill, a federal Superfund site. It has no liner underneath the landfill, but it has a cap. The landfill was used by many groups – US Air Force,

US Navy, various chemical and automotive companies. Activities were supervised by the City of Portsmouth.

- She provided a copy of the record of decision from September 30th, 1994, which was signed by the EPA. The report prescribed a pump and treat system would be installed to control water flow away from the landfill.
- She provided a schematic that outlined the calculated OU-2 Groundwater Capture Zone that included a pump and treat system to block contaminate migration to Berry's Brook. It also included provisions for installing additional bedrock wells that were supposed to be installed after a deep bedrock well investigation occurred.
 - This is important because the NH Department of Environmental Services (NHDES) provided a letter in July 2017 to state legislators stating the flow of contaminants into Berry's Brook is unacceptable and needed to be addressed.
- NH retains the authority to act under Consent Decree 1 in paragraphs 88 and 95, in the absence of EPA action.
- There are high levels of perfluorinated chemicals (PFCs) in the landfill. The site rests on one of the highest points in the seacoast area. Groundwater flows down to surrounding areas like Berry's Brook and other water sources.
- She referenced an e-mail from former Portsmouth Assistant Mayor Jim Splaine, where he stated that the Coakley Landfill Group (CLG) is defending the status quo and past actions, leading the CLG to ineffectively manage the Coakley Landfill site.
- Senator Innis said there was money allocated to the CLG in the past to install a pump and treat system. He asked if conditions changed to such a degree that the system was no longer needed.
 - Representative Messmer said the Department of Defense (DoD) allocated \$5.25 million to the City of Portsmouth to address the situation. If the pump and treat system was never installed, the money is owed back to the DoD with interest.
 - She acknowledged the public has recently gained access to 140 boxes of files from the City of Portsmouth concerning the Coakley Landfill. There was a concerted effort by some state officials to lobby against the proposed remedy to the site.
 - She said the PFCs coming from the Coakley Landfill persist in the body and do not go away easily because they have long half-lives. PFNA, a type of PFC, was recorded at one of the highest levels of concentration in Berry's Brook.
 - She said the City of Portsmouth used the DoD money to settle a lawsuit with the company it hired to install the cap, but later fired.
- Senator Bradley asked for the Consent Decree 1 paragraphs she referenced.
 - Representative Messmer referenced paragraphs 88 and 95, but said Tom Irwin would better speak to the specific references.
- Senator Feltes asked why the installation of the pump and treat system would be helpful.
 - Representative Messmer said the system would have originally blocked the flow of chemicals into Berry's Brook. HB 1766-FN compels the installation of that system to address the new PFCs.

Tom Irwin - provided written testimony

Vice President and Director, Conservation Law Foundation New Hampshire (CLF)

- CLF engaged in water quality monitoring in Berry's Brook roughly 18 months ago. CLF found the presence of PFCs, particularly PFOA and PFOS. NHDES and the CLG found higher levels of pollutants in Berry's Brook.
- NHDES sent a letter in July 2017 describing its concerns with the situation at Berry's Brook and the Coakley Landfill stating that "the migration of contaminants from site groundwater to surface water and the resultant impacts on Berry's Brook are unacceptable and need to be addressed." The letter also stated "NHDES believes that actions need to be implemented at the site to provide additional removal or containment of the contamination, in order to mitigate

these surface water quality impacts. In the long run, this will be the most reliable way to limit exposure to site contaminants.”

- State action to address off site mitigation is not precluded by the Coakley Landfill Operable Unit 2 Consent Decree. While the consent decree does preclude NHDES from taking action to address circumstances enumerated in the agreement, it does not provide the CLG with blanket immunity from any and all actions. Paragraphs 93 and 95 provide the state and the EPA the ability to take new or additional actions related to conditions not covered by the consent decree. The recent discovery of pollutants migrating off site fits the description of conditions by which the state and EPA can take action.
- Senator Feltes asked if the EPA has the authority over a Superfund site. Directing the NHDES to do something may run counter to federal rules over Superfund sites.
 - Mr. Irwin said the EPA does manage the site. The EPA is requiring CLG to take certain steps, such as a deep bedrock analysis, analysis of fish tissues, etc. The EPA could assert the argument that the state is precluded from any action.
- Senator Feltes asked if the CLF believes that the installation of a pump and treat system will address the situation.
 - Mr. Irwin said the CLF believes the installation is necessary. It will remove contaminants from the groundwater and prevent further migration. PFCs are highly persistent contaminants that are recent pollutants of concern.
- Senator Feltes asked how the CLF would respond to the counter argument that downgradient testing shows PFCs between zero and forty parts per trillion (ppt). Therefore, it may not be necessary to install a pump and treat system.
 - Mr. Irwin said CLF has seen high levels of PFCs in Berry’s Brook. There is a concern about private wells. The pollutants need to be contained on site.
- Senator Bradley asked if CLF had any knowledge of other states that have had legislation that addressed a consent decree that had not led to litigation, delaying further study and cleanup.
 - Mr. Irwin said he was not aware of such a scenario in another state.
- Senator Feltes asked what occurred between Consent Decree no. 1 and no. 2 in terms of remedies.
 - Mr. Irwin said the two consent decrees cover two different areas on the Coakley Landfill site. Operating Unit 2 is outside where the waste is consolidated and focuses on groundwater monitoring. The two consent decrees have different functions. He could not speak to the different remedies between them.

*Representative Robert Renny Cushing
Rockingham - District 21*

- The preferred method was to place a cap on the site and install a pump and dump system, preventing the migration of chemicals at the Coakley Landfill site. All parties agreed on the method. However, a decision was made to not require the CLG to install the pump and treat system. The Coakley Landfill Superfund site was the only site that was not allowed to follow through on their agreed method of remediation.
- The federal government provided money for a pump and treat system. If the system was not installed, the money had to be paid back. That money is gone due to mismanagement – the CLG used money to pay for a legal obligation. The City of Portsmouth’s financial report does not show the money they must pay back for not installing a pump and treat system.
- Neighboring towns around the Coakley Landfill site are being affected by the actions of the City of Portsmouth. Other towns will need to install treatment systems of their own.
- Senator Avard asked for an explanation of the CLG.
 - Representative Cushing said the CLG is made up of responsible parties who dumped in the Coakley Landfill. 63% of the group is made up of municipalities – Portsmouth, North Hampton, and Newington. The rest consists of generators and transporters.
- Senator Avard asked who spent the \$5.25 million dollars.

- Representative Cushing said no one really knows. The City of Portsmouth has directed its finance department to find where the money went. As a result of a right-to-know request, the public recently received access to city records.
- Senator Avard asked if municipalities would be required to pay for the pump and treat system.
 - Representative Cushing said HB 1766-FN would compel the responsible parties – the CLG – to pay. Portsmouth is one such part that constitutes 53% of the CLG.

Dabra Seiken
Portsmouth, NH

- The installation of a pump and treat system would not have treated the issue, but would have mitigated its effects.

David Meuse - provided written testimony
Portsmouth, NH

- Experienced water pollution in his youth in Woburn, MA.
- Senator Fuller Clark asked if Mr. Meuse would agree that a revised pump and treat system at the site would cost \$7 million dollars.
 - Mr. Meuse said he is not entirely sure about the cost, but there has been debate about who is responsible for the cost. There is an issue about where the money will come from to pay for remediation at the site.
- Senator Fuller Clark asked if the City of Portsmouth has to pay back the \$3 million dollars used to settle a lawsuit even if the site were to be fully remediated.
 - Mr. Meuse said he believed that was an accurate assessment, but deferred to other experts in the room. The money will have to pay back that money with interest.

Summary of testimony presented in opposition:

Jack Blalock
Mayor, City of Portsmouth

- The city understands the need to install a pump and treat system. However, the CLG takes direction from the EPA. The City of Portsmouth does not want to do something that is in contradiction to current legal agreements that would slow down the remediation progress. If the EPA said to install a pump and treat system, the CLG would do it.
- Senator Innis asked why CLG did not install a pump and treat system when it was ordered to.
 - Mayor Blalock said the EPA was testing for certain substances, such as heavy metals. Those tests showed the substances were decreasing, leading to a belief that the cap was working. The EPA said there was no longer a need for pump and treat. There was no knowledge of PFCs at the time.
 - In regards to the \$5.25 million, \$2.75 million was set aside for a pump and treat system. The rest was for the other remedy: the cap. The company installing the cap was doing a bad job that led to a lawsuit where the federal money was used. There is still the liability there for not using the money to install a pump and treat system.
- Senator Innis said that the attorney that represents the City of Portsmouth is also the executive director for the CLG. Senator Innis asked if that is a conflict of interest.
 - Mayor Blalock said the CLG is not an entity in and of itself. It is made up of other parties. Portsmouth represents a lion's share of the group. It makes sense to have the city's lawyer as the executive director.
- Senator Innis said it appeared the City of Portsmouth was looking out for its own interests. The City of Portsmouth did not seem to take into account the effect Coakley Landfill would have on neighboring communities.
 - Mayor Blalock said passage of HB 1766-FN would likely lead to a legal proceeding, delaying progress on the site. The City of Portsmouth is hosting a meeting in early June to get all the parties and information together at one time. The City of Portsmouth wants to ensure there is no misinformation.

- Senator Innis asked if the committee should have confidence that the City of Portsmouth will do the right thing.
 - Mayor Blalock said the committee should give the City of Portsmouth the opportunity to do the right thing.
- Senator Avar asked if other landfills were contributing to contamination.
 - Mayor Blalock said it was possible.
- Senator Avar asked if the City of Portsmouth is opposing the bill to focus on remediation progress and to prevent a delay with court litigation.
 - HB 1766-FN interferes with the consent decrees. The best path is to get all the responsible parties to follow the consent decrees.
- Senator Avar asked if the City of Portsmouth or the CLG had reached out to the EPA about their intentions.
 - Mayor Blalock said they have.
- Senator Feltes asked if the City of Portsmouth would object if the NH legislature determined that it was in the public interest to install a pump and treat system at the Coakley Landfill.
 - Mayor Blalock said the City of Portsmouth wants follow the law. If HB 1766-FN became law, the City of Portsmouth would follow it. The consent decrees are protecting taxpayers from paying a 100% remedy. The City of Portsmouth wants to focus on taking its orders from the EPA and the NHDES. HB 1766-FN could create litigation and prolong the situation.

Michael Wimsatt - provided written testimony
Director, Waste Management Division, NHDES

- HB 1766-FN would declare an imminent hazard (RSA 147-A:13) exists at the Coakley Landfill site and would direct NHDES to compel the CLG to implement within one year a groundwater remedial option that was considered in 1994 during the original Remedial Investigation and Feasibility Study for the site.
- History of Coakley Landfill Superfund Site:
 - The site was found to have impacted nearby drinking water wells in the early 1980s. It was listed as a federal National Priorities List (NPL) Superfund site in 1986.
 - By 1990s, remedies were selected and implemented. The remedies were embodied in court-ordered consent decrees, which govern the work at the site.
 - The landfill wastes were consolidated and covered with an engineered cap, and groundwater quality has been monitored since that time to document the reduction in the concentration and extent of contamination with metal and volatile organic compounds.
 - A pump and treat remedy was not implemented during the 1990s. Tests at that time concluded that the heavy metals were decreasing at the site. NHDES agreed with that assessment because it was supported by facts on the ground.
 - In 2016, sampling of monitoring wells indicated the presence of PFCs in groundwater. Subsequent sampling determined that PFCs were also detected in surface waters that drain the site.
 - NHDES is concerned about the surface water. The PFCs do exceed a screening level on the site that warrant further study.
- Oversight:
 - Authority over site management rests primarily with the EPA. NHDES serves in an active support role to EPA to ensure that the responsible parties comply with the legal agreements.
 - NHDES is aware of the concerns of the bill sponsors. NHDES shares those concerns and has been working with the EPA and CLG to determine the extent and nature of the PFC contamination discovered in monitoring wells at the facility, evaluate the risk to nearby drinking water, and determine whether additional remedial measures are necessary.
 - If determined to be necessary to protect human and ecological health, additional remedial measures will be designed and implemented.
- Opposition to HB 1766-FN rests on four reasons:

- 1) NHDES disagrees an imminent hazard exists. If that were true, NHDES would have worked with the EPA to order immediate mitigation of the hazard. While there are concerns about PFCs in site groundwater, it does not pose an “imminent and substantial hazard to human health or to the environment,” which is a high standard NHDES operates under.
- 2) Section 3 of the bill would require NHDES to compel CLG to implement a specific remedial alternative that was evaluated in 1994. That remedial alternative is based on data, technology, and experience that is more than 25 years old. The pump and treat system discussed in 1994 would have been effective at removing heavy metals, but would not have addressed the new PFC contaminants. A new evaluation should be performed to determine the most effective option.
- 3) NHDES is a signatory to court-ordered consent decrees with the EPA and the CLG. These documents govern the work on the site. The actions NHDES would be forced to undertake under Section 3 of the bill would be inconsistent with the provisions of those decrees. There are specific circumstances where the state can take unilateral actions when certain criteria is met, but NHDES does not believe those circumstances exist at this time.
- 4) Coakley is one of 21 Superfund NPL sites in NH. They are all subject to the federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and the EPA is the lead agency on each site. Legally binding documents govern the work at these sites. Passage of HB 1766-FN would disrupt the confidence of site owners and responsible parties who negotiate these agreements. It would have a chilling effect on the ability to secure agreements with parties at any Superfund site. Parties are able to make difficult commitments because they have the benefit of legal constraints on the manner in which they may be required to undertake these activities and expend funds. If parties expect that all of their commitments may be upended or overturned by state legislation, there would be little incentive to cooperate.
- NHDES is supportive of an amendment to provide a structure for NHDES to come back to the legislature to update them on the progress at the site.
- Senator Avard said Coakley is not deemed an imminent hazard. However, there are contaminants flowing from the site.
 - Mr. Wimsatt said there are 700 waste sites in NH. The primary concern is groundwater and surface water. Contaminants migrate off site because water moves. One needs to curtail it to make sure it does not affect people. Currently, the NHDES follows EPA standards for PFOA and PFOS at a combined standard of 70 ppt. There are higher levels of PFCs around the site, but tests for PFOA and PFOS register in the single digits. Some wells have higher levels away from the site, but it is not clear the cause stems from Coakley. PFCs exist across the state, not just at the Coakley Landfill.
- Senator Bradley referenced HB 463-FN (2017). Advocates for the bill asked for a standard of 20 ppt for PFOA and PFOS. However, none of the wells tested have come close to 20 ppt.
 - Mr. Wimsatt said none of the wells in proximity to the site have exceeded 20 ppt for PFOA and PFOS based on data to date. Two other wells a mile from the site are above 20 ppt, but NHDES is not convinced it is from the Coakley Landfill.
- Senator Bradley asked if NHDES is doing bedrock borings at Coakley this summer.
 - Mr. Wimsatt said NHDES is. It will be an investigation to learn how water moves in the bedrock that will take two years to complete.
- Senator Bradley asked what the NHDES would do if they found PFCs at higher levels after their study.
 - Mr. Wimsatt said the monitoring levels within the footprint of the site are well above 70 ppt. If drinking water is found to be above 70 ppt on a private well, NHDES would provide bottled water and connect that household to municipal water. NHDES may also try on site treatment through a granular activated carbon filtration system.
- Senator Bradley said Mr. Wimsatt described individual treatment. He asked what a general remediation would look like since the EPA governs the process.
 - Mr. Wimsatt said that if the bedrock studies concluded there was a substantial risk of offsite contamination, NHDES would look for an active remedy that would treat and contain the contaminants, which would include a pump and treat system.
- Senator Bradley said there was a lot of discussion on the best technology to use. He asked if pump and treat has graduated to a point to capture PFCs and if it was the best plan.

- Mr. Wimsatt said the technology is better today than 25 years ago. They would design a pump and capture system for groundwater. Granular activated carbon filtration would be used to remove PFCs. It is not quite reliable for 1, 4-dioxane, so another type of technology would need to be used.
- Senator Bradley asked if Mr. Wimsatt was aware of other states have passed state legislation to address consent decrees in their state.
 - Mr. Wimsatt is not aware of an example.
- Senator Bradley asked if HB 1766-FN would lead to significant litigation.
 - Mr. Wimsatt said there is a strong possibility a legal proceeding would occur.
- Senator Bradley asked if such a legal proceeding would slow down current testing and remediation efforts.
 - Mr. Wimsatt said it would. The legal proceeding and remediation efforts could work in tandem, but NHDES has limited resources. Technical staff would be needed to provide assistance in the legal efforts, taking away time away from current testing efforts.
- Senator Bradley said Mr. Wimsatt said there is a two year information gathering process. He asked if NHDES would have enough data to do individual treatments if the data illustrated the contaminants were spreading.
 - Mr. Wimsatt said NHDES would have the ability to respond. The agency could provide bottled water in a day and a granular activated carbon filtration system within weeks.
- Senator Feltes asked if the water in Berry's Brook touches any public water sources.
 - Mr. Wimsatt said any surface water is potentially interacting with an aquifer that gets into a water system.
- Senator Feltes said NHDES did not need a two year bedrock study to determine that migration of contaminants to Berry's Brook was unacceptable and needed to be addressed. He asked what NHDES has done other than taking part in a two year bedrock study that was not needed to reach the conclusion on Berry's Brook.
 - Mr. Wimsatt said the flow of contaminants into Berry's Brook is unacceptable. NHDES would like to mitigate the concentrations in Berry's Brook. However, NHDES is not legally situated to do so. NHDES continues to learn more about the bedrock situation and whether there is a risk to drinking water and how to set a surface water standard. The state does not have such a standard now.
- Senator Feltes referenced the July 2017 letter. He asked what actions should be taken.
 - Mr. Wimsatt said the letter expresses a reaction by NHDES that even if one cannot illustrate a significant risk, the migration of toxic chemicals in high concentrations in surface water needs to be addressed. NHDES has expressed concern to the CLG, but they have not acted on it.
- Senator Feltes asked if NHDES has contacted the EPA to provide them with NHDES's conclusion.
 - Mr. Wimsatt said EPA is aware of NHDES's position.
- Senator Feltes said there has not been any action of mitigating the flow into Berry's Brook. He asked if the EPA disagrees with the NHDES's assessment.
 - Mr. Wimsatt said he could not speak for the EPA.
- Senator Feltes asked if NHDES had considered intervening within the administrative process to compel the EPA to take action on the site.
 - Mr. Wimsatt said if NHDES believed they had the authority, they would act. However, NHDES is working within the guidelines of the consent decrees that govern the site.
- Senator Fuller Clark asked if there is any sense of what actions should or could be taken to prevent expansion of the flow of contaminants.
 - Mr. Wimsatt said it is possible to design a groundwater capture system, but not one that will be comprehensive to address all possible pathways. It could be targeted to improve quality in Berry's Brook.
- Senator Fuller Clark asked what is preventing NHDES from implementing a groundwater capture system now.
 - Mr. Wimsatt said NHDES does not have the legal authority to do so.
- Senator Fuller Clark asked if NHDES lacked authority because there is no surface water quality standard from the EPA.

- Mr. Wimsatt said it is because the analysis of the surface water in Berry's Brook does not demonstrate a significant public health risk.
- Senator Fuller Clark said the NHDES determined actions need to be taken. It appeared contradictory that NHDES wanted something done, but cannot do it.
 - Mr. Wimsatt said NHDES did not assert a significant threat existed in Berry's Brook. The July 2017 letter stated a belief that NHDES does not want to see a flow of contamination along a specific pathway from Coakley. The situation in Berry's Brook is unique – there are concentrations in Berry's Brook, but the data does not exceed any established standards, and NHDES believes it does not represent a significant threat.
- Senator Fuller Clark asked how the bedrock analysis related to Berry's Brook.
 - Mr. Wimsatt said the analysis will examine possible bedrock pathways for the flow of contaminants. NHDES wanted to make sure there was not a meaningful pathway from the Coakley Landfill site. The study will also examine whether the two are connected.
- Senator Innis said NHDES drilled test wells around the Coakley Landfill site. He asked what about the data trends.
 - Mr. Wimsatt said it has been a short period of time when NHDES discovered PFCs. There is very little trend data. There is a concern of 1, 4-dioxane, but data shows a downward trend for that contaminant.
- Senator Innis asked if 1, 4-dioxane has a different half-life than PFCs.
 - Mr. Wimsatt said 1, 4-dioxane has a persistent half-life, but it was not as persistent as the half-life of PFCs. Downward trends are the result of many different factors.
- Senator Innis said the committee is getting a mixed message from NHDES. The July 2017 letter highlighted concerns and confirmed fears about the site. However, NHDES testimony indicates that the situation at Coakley Landfill is not that bad. Senator Innis looked for a balance of those two positions.
 - Mr. Wimsatt said the July 2017 letter was written to the seacoast delegation that had a concern about the site. NHDES is concerned about the site. The letter was not a legal declaration to say a remedy needed to be implemented onsite. NHDES works on many sites throughout the state every day. NHDES does not want to see a migration pathway like they see in Berry's Brook. The letter was not a statement that what was occurring in Berry's Brook violated the law and that NHDES needed to act.
- Senator Innis said NHDES said the contamination in Berry's Brook was not serious. The July 2017 was a major surprise to him. Senator Innis asked for a level of comfort.
 - Mr. Wimsatt said that if NHDES believed there was a significant threat posed at the site right now, NHDES would move to implement something. NHDES will continue to work within the constraints of the laws and rules. NHDES cannot be a rogue agency. What NHDES is doing now is significant – they are monitoring the site with the EPA and CLG to gather as much information as possible to determine if a more robust approach is needed.

Richard Head & Michael Deyling - provided written testimony
Counsel, Rath, Young & Pignatelli, representing the CLG
Vice President, CES, Inc., acting engineer with the CLG

- There were two consent decrees that govern the site. Consent Decree 1 was concurred by the NHDES. The record of decision set forth the remedy to be implemented. Consent Decree 1 aimed at source control. Consent Decree 2 aimed at mitigation and migration. Both were aimed to act together as a remedy to the Coakley site.
- The list of remedies was outlined in Consent Decree 1, which listed a groundwater extraction and treatment component remedy. That remedy was later modified in a public process where EPA issued a Declaration of Explanation of Significant Differences, stating the EPA's belief that the groundwater extraction and treatment remedy should be eliminated due to recent testing on the site. The decision took into account federal and state requirements. The state concurred with that decision.
- Consent Decree 1 also outlined a federal lump sum payment of \$5.25 million dollars. That was the federal share of costs to be incurred for carrying out the response to Consent Decree 1.

- The remedy for the Coakley Landfill will take time to implement. The EPA is the governing body on the site and must approve any remedy.
- Consent Decree 2 implemented the management of migration decision. The EPA selected alternative remedy MM-2 on the Coakley Landfill site. It is an ongoing monitoring of the site and any further remedies need approval from the EPA. HB 1766-FN would implement MM-4 from Consent Decree 2 without EPA approval.
- There are substantial legal problems with HB 1766-FN:
 - There are two consent decrees that govern the site based on federal law. The bill raises a separation of powers issue.
 - HB 1766-FN is a retrospective law and the NH Constitution prohibits them.
 - HB 1766-FN runs afoul of the equal protection clause. HB 1766-FN declares an imminent hazard when there is no violation of current chemical standards. The bill does not apply to other wells around the state. The Coakley Landfill site is being treated differently than other sites in the state.
 - HB 1766-FN raises a contracts clause problem in the NH constitution. There is a consent decree implemented by the state twice. HB 1766-FN would upend both of them. The bill also represents a breach of contract problem.
 - Both consent decrees have a right to reopen process. It is not a legislative process, but a legal process spelled out in the consent decrees.
- The CLG continues to monitor the site with 75 testing locations around the site. The last sampling round was in September of 2017.
 - Residences away from the site have tested below 15 ppt for PFOA and PFOS.
 - The chemicals are not migrating rapidly away from the site. They are contained. Concentrations of PFOA and PFOS are below the current 70 ppt standard within the designated boundaries.
 - There is no imminent risk of exposure that requires a pump and treat system to be installed. The system outlined in HB 1766-FN would be ineffective at targeting the new emerging contaminants as it is more than 25 years old.
- Senator Bradley asked if the monitored homes (north side of Breakfast Hill Road) are the closest homes to the Coakley Landfill site.
 - Mr. Deyling said there are other homes, but they are on public water supply.
- Senator Fuller Clark asked about the testing of other homes in other directions from the site.
 - Mr. Deyling said NHDES asked for expanded testing. All the data suggested that the amount of PFOA and PFOS is very low, near the single digits.
- Senator Fuller Clark asked if there are other wells that have not been tested.
 - Mr. Deyling said there may be, but if there was a well on a property with public water, CLG has no mechanism to find it.
- Senator Feltes said Berry's Brook flows north, then out to sea. It flows past Breakfast Hill Road. Senator Feltes asked if Berry's Brook flows into Little River and if Little River has been tested.
 - Mr. Deyling said PFAS was detected in Little River, but at low levels.

Neutral Information Presented: None.

Future Action: Pending.

GJR

Date Hearing Report completed: April 3, 2018.